IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8619 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANCHHODSINH C PARMAR

Versus

BARODA DISTRICT SAHAKARI MILK PRODUCER'S SANGH LTD

Appearance:

MR JS YADAV for the Petitioner.

MR RP BHATT for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 18/03/2004

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the award of the Labour Court, Vadodara in Reference (LCV)

No. 109 of 1981 dated 22nd January, 1983 whereby the reference was rejected.

2. The petitioner was working as a loader in the respondent dairy. It is alleged that on 30th November, 1980, the petitioner had committed theft of milk. On the same day, threat was administered to the petitioner and his resignation was forcibly obtained by the respondent. Therefore, an industrial dispute was raised. The matter was referred to the Labour Court. Statement of claim was filed by the petitioner wherein the reference made was " whether the said resignation dated 2nd December, 1980 was taken forcibly by administering threat ?". It has also been contended by the learned advocate for the petitioner that there was no free-will and consent while giving the said resignation. The said contention is also fortified by the evidence of co-worker namely Chandubhai Vitthalbhai Gandhi vide exh. 34. It is also contended by the learned advocate for the petitioner that on 9th December, 1980, a letter was also addressed by the petitioner to his Union whereby it was informed to the Union that the threat was administered and therefore, resignation letter was compelled to be signed by the petitioner and hence acceptance of the resignation letter which is at exh. 37/11 may not be given any effect to and termination of service is therefore, bad in law and the Labour Court ought to have allowed the Reference.

3. It is contended by the learned advocate Mr. Bhatt for the respondent that the alleged incident has taken place on 30th November, 1980. The report was submitted by the Inspector of the dairy. A letter was also written by the petitioner on the same day whereby the facts of breaking up of the seal of the milk-can has been admitted and vide exh. 37/8, the petitioner had tendered his resignation dated 2nd December, 1980, while the same was accepted by the respondent vide exh. 37/11. Certain letters were also produced on record whereby samples were sent to the Labour Court for testing. Had there been any intention on the part of the respondent to take forcible resignation, the same could have been done on 30th November, 1980 itself, but the workman has tendered his resignation on 2nd December, 1980. Mr. Bhatt has also drawn my attention to exh. 37/4 which is an admission of the incident in presence of the co-workman Chandubhai Gandhi. The same co-workman was also present at the time of tendering the resignation on 2nd December, 1980. Neither of them has protested against resignation, if at all, the same was given under coercion, threat or undue influence.

4. It is also contended on behalf of the respondent that there was no need of calling a co-worker, if there would have been an intention on the part of the respondent to take forcible resignation. The presence of co-workman Chandubhai Gandhi itself, is suggestive of the fact, that no threat was administered by the respondent nor was there any compulsion on the part of the petitioner to tender his resignation. This aspect of the matter has been accepted by the petitioner in his deposition to the effect that in the letter at exh. 37/4 dated 30th November, 1980, there was a signature of Chandubhai Gandhi. This writing at exh. 37/4 is in the handwriting of co-workman Chandubhai Gandhi. This fact has also been admitted by the petitioner in his deposition. This makes it amply clear that there was a presence of co-workman and if the respondent wanted to take the resignation of the petitioner under compulsion, there was no need of the presence of Chandubhai Gandhi.

5. Similarly, the petitioner workman has admitted in his deposition that at the time of tendering the resignation which is at exh. 37/8, dated 2nd December, 1980, there was a presence of Chandubhai Gandhi. The workman must have thought it fit after the date of incident, i.e. 30.11.1980, upon proper advice, to tender resignation on 2nd December, 1980 and that too, in presence of the co-workman. Thus, the theory of coercion and compulsion on the part of the petitioner while tendering the resignation is absolutely an afterthought. There was enough time with both of them to retract the said resignation after 2nd December, 1980, but none of them has made any complaint immediately after 2nd December, 1980.

6. On 9th December, 1980, it is mentioned that the petitioner had written a letter to the Union to the effect that under compulsion the petitioner had given resignation to the respondent. In the said letter also, it is not referred, that Narendrabhai had given threats to the petitioner, that the respondent may go before police and the petitioner should give resignation. Thus, what is deposed before the Labour Court is absolutely different than what is mentioned in the letter dated 9th December, 1980. Enough discussion is made in paragraphs 12, 13, 14 and 15 in its award passed by the Labour Court.

7. I have carefully gone through the award and the documents produced before the Labour Court. Looking to the facts and circumstances of the case,

documents on record and the evidence led before the Labour Court, it prima facie appears that the incident is dated 30th November, 1980. The whole incident has been admitted by the workman vide his letter dated 30th November, 1980 produced at exh. 37/4. Enough time has passed thereafter for thinking process and in presence of co-workman, on 2nd December, 1980, the resignation was tendered which is produced at exh. 37/8 and the same was accepted by the respondent vide exh. 37/11. On both the days, i.e. on 30th November, 1980 and 2nd December, 1980, the workman-petitioner signed the documents in presence of his co-workman, namely Chandubhai Gandhi. Therefore, the theory to the effect that threat was administered and under compulsion, the petitioner had tendered the resignation is not believable looking to the evidence and documents on record.

8. Had there been an intention on the part of the respondent to take compulsory resignation of the petitioner, the respondent could have avoided presence of the co-workman as the petitioner was knowing how to write and what to write. Nonetheless, the respondent had allowed the presence of co-workman and in his presence, admission letter dated 30th November, 1980 and the resignation letter dated 2nd December, 1980 were given by the petitioner to the respondent which has culminated into the acceptance of the resignation at exh. 37/11. It is also a matter of fact that none of the two workmen including the petitioner has immediately made it known either to the management or to the police or at anywhere else after the resignation of the petitioner was forcibly obtained by the respondent management. The deposition of the workman Chandubhai Gandhi at exh. 34 is not believable for which detailed reasons are given in para-14 of the award and I see no reason to deviate from the conclusion arrived at by the Labour Court, much less departure from the conclusion of the Labour Court. It seems that Chandubhai Gandhi has tried to corroborate the false evidence given by the petitioner before the Labour Court and hence his evidence is not believed with certain additional logic given in the said para of the Award. I therefore, do not see any reason to discuss any further in detail the evidence produced before the Labour Court. This petition is preferred under Article 227 of the Constitution. Threadbare discussion of the evidence like in First Appeal is not necessary. The conclusion arrived at by the Labour Court is based on evidence, legal, justified in the facts of the case and in accordance with law. Therefore, there is no substance in this petition. The petition is dismissed. Rule discharged with no order as to costs.

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